Public Prosecutor v Una ak Mandau

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05–149 OF 2011
LOW HOP BING, MOHD HISHAMUDIN AND ABDUL WAHAB PATAIL JJCA
13 JUNE 2012

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Criminal Procedure — Appeal — Appeal against acquittal — Charge of murder — Deceased drunk and quarreled with wife — Accused attempted to stop quarrel — Deceased grasped and strangled accused — Deceased found later with forehead oozing with blood and died shortly — Cause of death was 'heamoperitoneum due to ruptured liver due to blunt abdominal injuries — Whether accused caused death — Whether prosecution proved case beyond reasonable doubt — Penal Code s 302

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The accused was charged with murder, an offence punishable under s 302 of the Penal Code ('Code'). The prosecution built its case around the testimonies of PW1 and PW3. PW1 testified that on the day the tragedy took place, he had drank alcohol with the deceased and the two later left in PW1's car. After sending the deceased home, PW1 headed to the Batang Ai Primary School guardhouse where the accused was stationed. The accused then went home, returned to the guardhouse two hours later and asked PW1 to check on the deceased, suggesting PW1 to visit the deceased as the accused had 'done once to him'. PW1 thought nothing of what the accused said and went to sleep. When he woke up, PW1 was told that the deceased had passed away. PW3, who was the deceased's wife and the accused's daughter testified that the deceased returned home drunk and quarreled with her and the accused attempted to stop the quarrel. The deceased then grasped and strangled the accused from behind. PW3 then headed out of the house with her child. When PW3 went back to the house subsequently, she saw the deceased's forehead oozing with blood. Immediately, she sent the deceased in a van to the clinic where PW4 conducted a physical examination of the deceased's body, stitched his wound and gave him anti-tetanus injection. Shortly later, the deceased died and the cause of death was 'heamoperitoneum due to ruptured liver due to blunt abdominal injuries'. It was the accused's story that on the unfortunate day, when he arrived home after work, there was an altercation between the deceased and PW3. The accused then advised the deceased to stop drinking. The deceased tried to pin down the accused from behind, but the accused ran out of the house with his grandchild. The accused did not know what happened to the deceased. It was only later that he came to know that the deceased had passed away. The learned trial judge considered all the evidence adduced before him and held that the prosecution failed to prove its case beyond reasonable doubt against the accused. The accused was then acquitted

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A and discharged. The issue that arose in the present appeal was whether the learned judge was correct in holding that the prosecution had failed to prove its case against the accused beyond reasonable doubt and in ordering an acquittal and discharge of the accused at the close of the defence's case.

B **Held**, dismissing the appeal and affirming the decision of court below:

(1) The accused's explanation was not a bare denial. On the totality of evidence, the court agreed with the learned trial judge in holding that the prosecution had failed to prove its case beyond reasonable doubt and that the accused's explanation was sufficient to cast a reasonable doubt on the C prosecution's case. The evidence and the circumstances did not admit of irresistible inferences for the purpose of proving that the accused had inflicted the injury which caused the death of the deceased (see para 13).

(2) Where the prosecution failed to prove its case beyond reasonable doubt as D in the instant appeal, s 182A(3) of the Criminal Procedure Code requires the court to record an order of acquittal. There was no misdirection on the part of the learned trial judge in ordering that the accused be acquitted and discharged (see para 15).

E **[Bahasa Malaysia summary**

Tertuduh dituduh membunuh, kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan ('Kanun'). Pihak pendakwaan membina kesnya dengan keterangan-keterangan PW1 dan PW3. PW1 memberi keterangan bahawa pada hari tragedi berlaku, dia meminum minuman keras dengan si mati dan F dua orang yang lain beredar dari tempat tersebut dengan kereta PW1. Selepas menghantar si mati balik ke rumah, PW1 menuju ke pondok pegawal Sekolah Rendah Batang Ai di mana tertuduh bertugas. Tertuduh kemudiannya pulang ke rumah, balik semula ke pondok pengawal dua jam kemudian dan meminta PW1 memeriksa si mati, mencadangkan PW1 melawat si mati kerana tertuduh G telah 'done once to him'. PW1 tidak memikirkan apa-apa mengenai apa yang dikatakan oleh tertuduh dan pergi tidur. Apabila dia bangun PW1 diberitahu bahawa si mati telah meninggal dunia. PW3, isteri si mati dan anak tertuduh memberi keterangan bahawa si mati pulang ke rumah adalam keadaan mabuk dan bergaduh dengannya dan tertuduh mencuba untuk memberhentikan H pergaduhan tersebut. Si mati kemudiannya memegang dan mencekik tertuduh dari belakang. PW3 kemudiannya menuju keluar dari rumah dengan anaknya. Apabila PW3 pulang semula ke rumah, dia melihat dahi si mati berlumuran darah. Dengan segera dia menghantar si mati menaiki van ke klinik di mana PW4 melakukan pemeriksaan fizikal ke atas badan si mati, menjahit lukanya I dan memberikan dia suntikan anti-tetanus. Tidak lama kemudian, si mati meninggal dunia dan sebab kematian adalah 'heamoperitoneum due to ruptured liver due to blunt abdominal injuries'. Adalah hujahan tertuduh bahawa pada hari malang tersebut, apabila dia tiba di rumah selepas kerja, terdapat perbalahan di antara si mati dan PW3. Tertuduh kemudiannya

menasihati si mati supaya berhenti minum. Si mati mencuba untuk memegang tertuduh dari belakang, tetapi tertuduh lari keluar dari rumah dengan cucunya. Tertuduh tidak tahu apa yang berlaku kepada si mati. Hanya kemudiannya dia mengetahui yang si mati telah meninggal dunia. Hakim bicara yang bijaksana mempertimbangkan kesemua keterangan yang dikemukakan di hadapannya dan memutuskan bahawa pihak pendakwaan gagal untuk membuktikan kesnya melampaui keraguan munasabah terhadap tertuduh. Tertuduh dilepaskan dan dibebaskan. Isu yang berbangkit di dalam rayuan ini adalah sama ada hakim yang bijaksana adalah betul dalam memutuskan bahawa pihak pendakwaan telah gagal membuktikan kesnya terhadap tertuduh melampaui keraguan munasabah dan dalam memerintahkan pembebasan dan pelepasan tertuduh di akhir kes pihak pembelaan.

Diputuskan, menolak rayuan dan mengesahkan keputusan mahkamah bawahan:

(1) Penjelasan tertuduh bukan penafian kosong. Atas keterangan keseluruhannya, mahkamah bersetuju dengan hakim bicara yang bijaksana dalam memutuskan bahawa pihak pendakwaan telah gagal untuk membuktikan kesnya melampaui keraguan munasabah dan bahawa penjelasan tertuduh mencukupi untuk melemparkan keraguan munasabah ke atas kes pihak pendakwaan. Keterangan dan keadaan tidak memberikan inferens yang tidak dapat ditahan bagi membuktikan bahawa tertuduh telah mengakibatkan kecederaan yang menyebabkan kematian si mati (lihat perenggan 13).

(2) Apabila pihak pendakwaan gagal untuk membuktikan kesnya melampaui keraguan munasabah seperti dalam rayuan ini, s 182A(3) Kanun Acara Jenayah mengkehendaki mahkamah untuk merekodkan perintah pembebasan. Tidak terdapat salah arah oleh pihak hakim bicara yang bijaksana dalam memerintahkan tertuduh dibebaskan dan dilepaskan (lihat perenggan 15).]

Notes

For cases on appeal against acquittal, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 205–206.

Cases referred to

Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169; [1991] 1 CLJ (Rep) 311, SC (folld)

Legislation referred to

Criminal Procedure Code s 182A(3)
Penal Code s 302

Appeal from: Criminal Trial No 45–1 of 2010-I (SG) (High Court, Sri Aman)

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Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.
Peli ak Aron (Peli Anak Aron) for the respondent.

B **Low Hop Bing JCA (delivering judgment of the court):**

APPEAL

C

[1] The accused was charged with the offence of murder, to wit, by causing the death of one Cindy ak Wat on 6 February 2010 at about 6pm at an unnumbered house at Rumah Berandah, Nanga Benggap, Lubok Antu, Sarawak, punishable under s 302 of the Penal Code.

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[2] The learned trial judge acquitted and discharged the accused at the close of the defence case.

E **[3]** This is the appeal by the prosecution.

CASE FOR THE PROSECUTION

[4] The case for the prosecution unfolded with the testimony of Baji @ Lidi
F ak Jalin ('PW1'), a policeman attached to the Lubok Antu Police Station. On 6 February 2010 from 10am–2pm, PW1 was with the deceased at Lubok Antu Bazaar, drinking alcohol known locally as 'langkau'. They then left in PW1's car. After sending the deceased home, PW1 had a rest at the Batang Ai Primary School guardhouse where the accused was stationed. The accused then went
G home to take food, returned to the guardhouse two hours later and asked PW1 to check on the deceased. The accused spoke to PW1 in the Iban language, about what he (the accused) had done to the deceased. When translated into Bahasa Melayu, it went like this: 'Cuba melawat kawan kamu. Saya sudah beri dia sekali' (Try visiting your friend. I have done once to him). PW1 thought
H nothing of what the accused said, and went to sleep in his car which was parked by the side of the road. When PW1 woke up, he was told that the deceased had passed away. PW1 went to the deceased's house where he saw the accused crying. PW1 comforted the accused.

I **[5]** Lindawati ak Una ('PW3'), the deceased's wife and the accused's daughter, testified that on 6 February 2010, the deceased returned home drunk and quarrelled with her in the sitting room. The accused tried to stop the quarrel. The deceased then grasped and strangled the accused from behind. PW3 then went out of the house with her child. When PW3 went back to the

house subsequently, she saw the deceased's forehead oozing with blood. Immediately, she sent the deceased in a van to the clinic where Steve Ray Ah Shak Loi ('PW4') conducted a physical examination of the deceased's body, stitched his wound and gave him anti-tetanus injection. However, the deceased died shortly later and was brought back to his house. PW3 also testified that the deceased was habitually drunk and often vomited blood when he was drunk.

[6] Dr Jamil Dolkadir ('PW15') carried out an autopsy on the deceased on 8 February 2010. His autopsy report stated, inter alia:

> The following were the external injuries noted:
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> 1 small laceration over left eyebrow measuring about 2 cm long which had been stitched;
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> 2 abrasion at posterior left shoulder and lateral left wrist; and
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> 3 bruises at anterior neck.
>
> INTERNAL AUTOPSY FINDING
>
> There was massive haemaperitoneum but no haethorax seen.
>
> GASTROINTESTINAL SYSTEM
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> … The anterior left lobe of the liver was ruptured measuring about 12 cm long and 8 cm deep causing the massive haemaperitoneum.
>
> CAUSE OF DEATH
>
> Heamoperitoneum due to ruptured liver due to blunt abdominal injuries.

[7] PW15 explained that the blunt abdominal injuries could be caused by leg, hand or other blunt object.

[8] At the close of the case for the prosecution, the learned trial judge was satisfied that the prosecution had established a prima facie case against the accused who was called upon to enter his defence.

THE DEFENCE CASE

[9] The accused's sworn evidence unveiled that on 6 February 2010 when he arrived home after work, there was an altercation between the deceased and his wife ('PW3'). The accused asked PW3 what it was about. PW3 uttered 'that drunk fellow'. The accused then advised the deceased to stop drinking. The deceased responded with the words 'one-eyed person' and tried to pin down the accused from behind, but the accused ran out of the house with his grandchild. The accused did not know what happened to the deceased thereafter. Later, PW3 went to the school where the accused was working and told the accused what had happened to the deceased.

[10] When cross-examined, the accused steadfastly denied the following suggestions put to him:

(a) that the deceased had strangled him from behind;

(b) that he had retaliated by hitting the deceased; and

(c) that he had used his hands and legs to hit the deceased.

DECISION OF THE HIGH COURT

[11] The learned trial judge considered all the evidence adduced before him and found that, apart from the evidence of PW3, there was a paucity of evidence to establish that the accused had kicked or punched the deceased or that he had used a blunt object to inflict the injury to cause the death of the deceased. He held that the prosecution has failed to prove its case beyond reasonable doubt against the accused.

QUESTION FOR DETERMINATION

[12] The fundamental question for determination in the instant appeal is:

> Upon considering the entire evidence adduced at the trial, was the learned judge correct in holding that the prosecution had failed to prove its case against the accused beyond reasonable doubted and in ordering an acquittal and discharge of the accused at the close of the defence case?

[13] We are of the view that on the evidence adduced at the trial, the accused's explanation was not a bare denial. On the totality of evidence, we agree with the learned trial judge in holding that the prosecution had failed to prove its case beyond reasonable doubt and that the accused's explanation was sufficient to cast a reasonable doubt on the prosecution's case. The evidence and the circumstances do not admit of irresistible inferences for the purpose of proving that the accused had inflicted the injury which caused the death of the deceased.

[14] The duty of the prosecution to prove its case beyond reasonable doubt has been stated with unrivalled clarity by Mohd Azmi SCJ (as he then was) in *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169 at p 171; [1991] 1 CLJ (Rep) 311 at p 315 (SC). The principles are:

(1) it is a well established principle of Malaysian criminal law that the general burden of proof lies throughout the trial on the prosecution to prove

beyond reasonable doubt the guilt of the accused for the offence with which he is charged. There is no similar burden placed on the accused to prove his innocence; and

(2) if defence is called, the duty of the accused is only to cast a reasonable doubt in the prosecution case. He is not required to prove his innocence beyond reasonable doubt.

[15] Where the prosecution has not proved its case beyond reasonable doubt as in the instant appeal, s 182A(3) of the Criminal Procedure Code requires the court to record an order of acquittal. There was no misdirection on the part of the learned trial judge in ordering that the accused be acquitted and discharged. Our answer to the above question is in the affirmative.

CONCLUSION

[16] On the foregoing grounds, we dismiss this appeal and affirm the decision of the High Court.

Appeal dismissed and decision of court below affirmed.

Reported by Afiq Mohamad Noor